

SERVED: June 3, 1998

NTSB Order No. EA-4664

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of May, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14662
v.)	
)	
DAVID A. BABB,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from the order of Administrative Law Judge William E. Fowler, Jr., granting the Administrator's motion for summary judgment.¹ The law judge affirmed an order of the Administrator revoking respondent's commercial pilot certificate, pursuant to respondent's violation

¹The law judge's order is attached. Respondent filed an appeal brief and the Administrator filed a reply. Respondent then filed a "response to the reply" which, per Board rule 821.48(e), we have not considered.

of section 61.15(a)(2) of the Federal Aviation Regulations (FARs), 14 C.F.R. § 61.15(a)(2).² We deny the appeal.

The Administrator alleged and demonstrated by submitting a copy of the indictment and judgment that, on or about June 21, 1993, respondent pleaded guilty and was convicted in United States District Court for the District of South Carolina, Greenville Division, of possession with intent to distribute and distribution of cocaine, in violation of 21 U.S.C. § 841(a)(1).³ Respondent denied this allegation, claiming that the conviction was "illegal."

In granting summary judgment, the law judge properly recognized that the Board does not have the authority to consider

(..continued)

²FAR section 61.15(a) provides, in pertinent part:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

* * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

³The count to which respondent pleaded guilty stated, as follows:

That during March of 1992, in the District of South Carolina, and elsewhere, the defendant, DAVID A. BABB, did knowingly and intentionally possess with intent to distribute, and did distribute, a quantity of cocaine, a Schedule II controlled substance; in violation of Title 21, United States Code, Section 841(a)(1).

a collateral attack on a criminal conviction.⁴ He further noted that, under Board precedent, an airman who has been convicted of participating in a commercial drug activity demonstrates that he lacks the care, judgment, and responsibility required of a certificate holder.⁵

Respondent argues the same issues on appeal, to no avail. He has identified no error in the law judge's order and we see none.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's commercial pilot certificate shall begin 30 days after service of this order.⁶

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴See Administrator v. Berryhill, NTSB Order No. EA-4414 at 4 (1996), and cases cited therein.

⁵The law judge cited Administrator v. Piro, NTSB Order No. EA-4049 at 3-4 (1993), aff'd, 66 F.3d 335 (9th Cir. 1995), where we stated,

[i]n our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).